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David H. Blackwell
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Via Electronic Mail

April 30, 2019

Norman Yee, President
and the San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
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**Re: Disapproval Findings re CUA: 1052-1060 Folsom St./190-194 Russ St.
April 30, 2019 Meeting: Agenda Item 35
File No. 190449**

Dear President Yee and Supervisors:

On behalf of Golden Properties LLC, the owner of the above-referenced property, we submit this correspondence with regard to the above-referenced Agenda Item. On April 9, 2019, this Board heard the appeal of the Planning Commission's approval of a conditional use authorization (CUA) for Golden Properties' multifamily residential project. At that hearing, the Board reversed the Planning Commission's CUA approval subject to the adoption of written findings in support of the reversal. The April 30 Agenda Item is the Board's adoption of those findings. Although Golden Properties exhausted its administrative remedies before and during the April 9 Board meeting, it submits this letter in response to the proposed findings. Because the April 30 Board action is related to the April 9 Board action, this correspondence incorporates by reference all oral and written communications to the Planning Commission and this Board relating to the subject appeal.

As set forth in our April 8 correspondence to the Board, Code of Civil Procedure section 1094.5(b) requires a local agency decision to be set aside upon a showing of a prejudicial abuse of discretion. *Cobb v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2002) 98 Cal. App. 4th 345, 351. "Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." Code of Civ. Proc., § 1094.5(b).

The Board's April 9 reversal of the CUA approval constituted an abuse of discretion. Both Golden Properties and City Staff provided substantial evidence supporting the issuance of the CUA. No substantial evidence provided evidence to the contrary. With regard to the proposed findings,

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they do not provide support for the Board's reversal of the CUA, and the evidence in the record does not support the findings, thus adoption of the proposed Motion at today's hearing would also constitute an abuse of discretion. As explained by the California Supreme Court:

implicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route.

Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d 506, 515.

Here, the draft Motion fails to reveal an analytic route from the evidence in the record to the Board's decision to reverse the CUA. To the contrary, the Motion's findings are simply conclusory references to some of the considerations listed in Planning Code section 303(c). There is no reference to any specific evidence in the record that supports any of the findings. The fact is that the evidence in the record clearly demonstrates that the project would increase the shadow on the Victoria Manolo Draves Park by only 0.38% (from the existing annual shading of 7.41% to 7.79%), and would not contribute any new shadow from October 18 to February 18, which both Staff and the Planning Commission found to be insignificant.

Similarly, there is no explanation as to how the project would be detrimental to the health, safety, convenience or general welfare of people working and living in the area, or how the "mass of the building is not compatible with the scale of the surrounding district." Compared to the inadequate findings in the draft Motion, the Planning Commission's adopted Motion No. 20361 provides detailed findings supported by specific references to evidence in the record, which fully rebut the unsupported findings in the Board's draft Motion.

Finally, as stated in our April 8 correspondence, the Housing Accountability Act and the Density Bonus Law apply to the project, yet the Board's Motion fails to include the findings required by both of those statutes for disapproving a qualifying residential development project.

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In sum, the Board's proposed findings are legally inadequate, and the decision to reverse the Planning Commission's CUA approval constitutes an abuse of discretion.

Very truly yours,

A handwritten signature in blue ink that reads "David H. Blackwell". The signature is written in a cursive, slightly slanted style.

David H. Blackwell

DHB:kem

cc: Sergio Iantorno
Paul Iantorno